
IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1975

Mr. CHILES (for himself, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. CLARK, Mr. CRANSTON, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUMPHREY, Mr. MCGOVERN, Mr. MATTHIAS, Mr. METCALF, Mr. MONDALE, Mr. NELSON, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. ROTH, Mr. STAFFORD, Mr. STONE, and Mr. WEICKER) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.—This Act may be cited as
4 the “Government in the Sunshine Act”.

5 SEC. 2. DECLARATION OF POLICY.—It is hereby de-
6 clared to be the policy of the United States that the public
7 is entitled to the fullest practicable information regarding
8 the decisionmaking processes of the Federal Government.

9 SEC. 3. DEFINITIONS.—For purposes of this Act—

10 (1) “National defense” means—

1 (A) the protection of the United States and its
2 military forces against actual or potential military
3 attack by a foreign power;

4 (B) the obtaining of foreign intelligence informa-
5 tion deemed essential to the military defense of the
6 United States or its forces;

7 (C) the protection of information essential to the
8 military defense of the United States or its forces against
9 foreign intelligence activities; or

10 (D) the protection, to the extent specifically found
11 necessary by the President in writing, of the United
12 States against overthrow of the Government by force;
13 and

14 (2) "Person" includes an individual, partnership, cor-
15 poration, associated governmental authority, or public or
16 private organization.

17 TITLE I—CONGRESSIONAL PROCEDURES

18 SEC. 101. SENATE COMMITTEE HEARING PRO-
19 CEDURE.—(a) The Legislative Reorganization Act of 1946
20 is amended—

21 (1) by striking out the third sentence of section
22 133 (b) ;

23 (2) by striking out subsections (a), (b), and (f)
24 of section 133A;

25 (3) by adding after section 133B the following:

1 “OPEN SENATE COMMITTEE MEETINGS

2 “SEC. 133C. (a) Each meeting of each standing, select,
3 or special committee of the Senate, or subcommittee thereof,
4 including meetings to conduct hearings, shall be open to the
5 public: *Provided*, That a portion or portions of such meet-
6 ings may be closed to the public if the committee or subcom-
7 mittee, as the case may be, determines by a vote of a majority
8 of a quorum of the committee or subcommittee present that
9 the matters to be discussed or the testimony to be taken at
10 such portion or portions—

11 “(1) will disclose matters necessary to be kept
12 secret in the interests of national defense or the neces-
13 sarily confidential conduct of the foreign policy of the
14 United States;

15 “(2) will relate solely to matters of committee staff
16 personnel or internal staff management or administra-
17 tion;

18 “(3) will tend to charge with crime or misconduct,
19 or to disgrace any person, or will represent a clearly
20 unwarranted invasion of the privacy of any individual:
21 *Provided*, That this paragraph shall not apply to any
22 Government officer or employee with respect to his of-
23 ficial duties or employment: *And provided further*, That
24 as applied to a witness at a meeting, this paragraph

1 shall not apply unless the witness requests in writing that
2 the hearing be closed to the public;

3 “(4) will disclose information pertaining to any in-
4 vestigation conducted for law enforcement purposes, but
5 only to the extent that the disclosure would (A) inter-
6 fere with enforcement proceedings, (B) deprive a per-
7 son of a right to a fair trial or an impartial adjudication,
8 (C) disclose the identity of a confidential source and,
9 in the case of a record compiled by a criminal law en-
10 forcement authority in the course of a criminal investi-
11 gation, or by an agency conducting a lawful national
12 security intelligence investigation, confidential informa-
13 tion furnished only by the confidential source, (D) dis-
14 close investigative techniques and procedures, or (E)
15 endanger the life or physical safety of law enforcement
16 personnel; or

17 “(5) will disclose information relating to the trade
18 secrets or financial or commercial information pertaining
19 specifically to a given person where—

20 “(A) a Federal statute requires the informa-
21 tion to be kept confidential by Government officers
22 and employees; or

23 “(B) the information has been obtained by the
24 Federal Government on a confidential basis other
25 than through an application by such person for a

1 specific Government financial or other benefit, and
2 the information must be kept secret in order to pre-
3 vent grave and irreparable injury to the competitive
4 position of such person.

5 A separate vote of the committee shall be taken with respect
6 to each committee or subcommittee meeting a portion or por-
7 tions of which are proposed to be closed to the public pur-
8 suant to this subsection. The vote of each committee member
9 participating in each such vote shall be recorded and no
10 proxies shall be allowed. Within one day of such vote, the
11 committee shall make publicly available a written copy of
12 such vote and, if a meeting or portion thereof is closed to the
13 public, a full written explanation of its action.

14 “(b) Each standing, select, or special committee of the
15 Senate, or subcommittee thereof, shall make public announce-
16 ment of the date, place, and subject matter of each meeting
17 at least one week before such meeting unless the committee
18 or subcommittee determines by a vote of a majority of a
19 quorum of the committee or subcommittee present that com-
20 mittee business requires that such meeting be called at an
21 earlier date, in which case the committee shall make public
22 announcement of the date, place, and subject matter of such
23 meeting at the earliest practicable opportunity.

24 “(c) A complete transcript shall be made of each meet-
25 ing of each standing, select, or special committee or subcom-

1 mittee (whether open or closed to the public). Except as
2 provided in subsection (d) of this section, a copy of each
3 such transcript shall be made available for public inspection
4 within seven days of each such meeting, and additional copies
5 of any transcript shall be furnished to any person at the actual
6 cost of duplication. Notwithstanding the provisions of sub-
7 section (d), in the case of meetings closed to the public, the
8 portion of such transcript made available for public inspection
9 shall include a list of all persons attending and their affilia-
10 tion, except for any portion of such list which would disclose
11 the identity of a confidential source, or endanger the life
12 or physical safety of law enforcement personnel.

13 “(d) In the case of meetings closed to the public pur-
14 suant to subsection (a) of this section, the committee or sub-
15 committee may delete from the copies of transcripts that are
16 required to be made available or furnished to the public pur-
17 suant to subsection (c) of this section, those portions which
18 it determines by vote of the majority of a quorum of the
19 committee or subcommittee consist of materials specified in
20 paragraph (1), (2), (3), (4), or (5) of subsection (a)
21 of this section. A separate vote of the committee or sub-
22 committee shall be taken with respect to the transcript of
23 each such meeting. The vote of each committee or subcom-
24 mittee member participating in each such vote shall be
25 recorded and published and no proxies shall be allowed. In

1 place of each portion deleted from copies of the transcript
2 made available to the public, the committee or subcommittee
3 shall supply a full written explanation of why such portion
4 was deleted, and a summary of the substance of the deleted
5 portion that does not itself disclose information specified in
6 paragraph (1), (2), (3), (4), or (5) of subsection (a).
7 The committee or subcommittee shall maintain a complete
8 copy of the transcript of each meeting (including those por-
9 tions deleted from copies made available to the public), for
10 a period of at least one year after such meeting, or until
11 the Congress following the one in which such meeting was
12 held is assembled, whichever occurs later.

13 “(e) A point of order may be raised in the Senate
14 against any committee or subcommittee vote to close a meet-
15 ing to the public pursuant to subsection (a) of this section,
16 or against any committee or subcommittee vote to delete
17 from the publicly available copy a portion of a meeting tran-
18 script pursuant to subsection (d) of this section, by com-
19 mittee or subcommittee members comprising one-fourth or
20 more of the total number of members of such committee or
21 subcommittee present and voting for or against such action.
22 Any such point of order shall be raised in the Senate within
23 two calendar days after the vote against which the point
24 of order is raised, and such point of order shall be a
25 matter of highest personal privilege. Each such point of

1 order shall immediately be referred to a Select Committee
2 on Meetings consisting of the President pro tempore, the
3 leader of the majority party, and the leader of the minority
4 party. The select committee shall examine the complete
5 verbatim transcript of the meeting in question and shall rule
6 whether the vote to close the meeting was in accordance
7 with subsection (a) of this section, or whether the vote to
8 delete a portion or portions from publicly available copies
9 of the meeting transcript was in accordance with subsection
10 (d) of this section, as the case may be. The select committee
11 shall report to the Senate within five calendar days (ex-
12 cluding days where the Senate is not in session) a resolu-
13 tion containing its findings. If the Senate adopts a resolution
14 finding that the committee vote in question was not in
15 accordance with the relevant subsection, it shall direct that
16 there be made publicly available the entire transcript of
17 the meeting improperly closed to the public or the portion
18 or portions of any meeting transcript improperly deleted
19 from the publicly available copy, as the case may be.

20 “(f) The Select Committee on Meetings shall not be
21 subject to the provisions of subsection (a), (b), (c), or
22 (d) of this section.”

23 (b) Subsection (a) of subsection 242 of the Legislative
24 Reorganization Act of 1970 is repealed.

1 (c) Paragraph 7 (b) of Rule XXV of the Standing
2 Rules of the Senate is repealed.

3 (d) Title I of the table of contents of the Legislative
4 Reorganization Act of 1946 is amended by inserting imme-
5 diately below item 133B the following:

“133C. Open Senate committee meetings.”.

6 SEC. 102. Clause 27 (f) (2) of Rule XI of the Rules of
7 the House of Representatives is amended to read as follows:

8 “(2) (A) Each meeting of each standing, select, or
9 special committee or subcommittee, including meetings to
10 conduct hearings, shall be open to the public: *Provided*, That
11 a portion or portions of such meetings may be closed to the
12 public if the committee or subcommittee, as the case may be,
13 determines by vote of a majority of a quorum of the com-
14 mittee or subcommittee present that the matters to be dis-
15 cussed or the testimony to be taken at such portion or
16 portions—

17 “(i) will disclose matters necessary to be kept
18 secret in the interests of national defense or the neces-
19 sarily confidential conduct of the foreign policy of the
20 United States;

21 “(ii) will relate solely to matters of committee staff
22 personnel or internal staff management or administra-
23 tion;

1 “(iii) will tend to charge with crime or misconduct,
2 or to disgrace any person, or will represent a clearly
3 unwarranted invasion of the privacy of any individual:
4 *Provided*, That this paragraph shall not apply to any
5 Government officer or employee with respect to his offi-
6 cial duties or employment: *And provided further*, That
7 as applied to a witness at a meeting, this paragraph shall
8 not apply unless the witness requests in writing that the
9 hearing be closed to the public;

10 “(iv) will disclose information pertaining to any
11 investigation conducted for law enforcement purposes,
12 but only to the extent that the disclosure would (A)
13 interfere with enforcement proceedings, (B) deprive
14 a person of a right to a fair trial or an impartial adjudica-
15 tion, (C) disclose the identity of a confidential source
16 and, in the case of a record compiled by a criminal law
17 enforcement authority in the course of a criminal investi-
18 gation, or by an agency conducting a lawful national
19 security intelligence investigation, confidential informa-
20 tion furnished only by the confidential source, (D) dis-
21 close investigative techniques and procedures, or (E)
22 endanger the life or physical safety of law enforcement
23 personnel; or

24 “(v) will disclose information relating to the trade

1 secrets or financial or commercial information pertain-
2 ing specifically to a given person where—

3 “(I) a Federal statute requires the information
4 to be kept confidential by Government officers and
5 employees; or

6 “(II) the information has been obtained by the
7 Federal Government on a confidential basis other
8 than through an application by such person for a
9 specific Government financial or other benefit, and
10 the information must be kept secret in order to
11 prevent grave and irreparable injury to the competi-
12 tive position of such person.

13 A separate vote of the committee shall be taken with respect
14 to each committee or subcommittee meeting a portion or por-
15 tions of which are proposed to be closed to the public pur-
16 suant to this subsection. The vote of each committee member
17 participating in each such vote shall be recorded and no
18 proxies shall be allowed. Within one day of such vote, the
19 committee shall make publicly available a written copy of
20 such vote and, if a meeting or portion thereof is closed to
21 the public, a full written explanation of its action.

22 “(B) Each standing, select, or special committee or
23 subcommittee shall make public announcement of the date,
24 place, and subject matter of each meeting at least one week

1 before such meeting unless the committee or subcommittee
2 determines by a vote of a majority of a quorum of the com-
3 mittee or subcommittee present that committee business re-
4 quires that such meeting be called at an earlier date, in which
5 case the committee shall make public announcement of the
6 date, place, and subject matter of such meeting at the earliest
7 practicable opportunity.

8 “(C) A complete transcript shall be made of each meet-
9 ing of each standing, select, or special committee or subcom-
10 mittee (whether open or closed to the public). Except as
11 provided in paragraph (D), a copy of each such transcript
12 shall be made available for public inspection within seven
13 days of each such meeting, and additional copies of any tran-
14 script shall be furnished to any person at the actual cost of
15 duplication. Notwithstanding the provisions of paragraph
16 (D), in the case of meetings closed to the public, the portion
17 of such transcript made available for public inspection shall
18 include a list of all persons attending and their affiliation,
19 except for any portion of such list which would disclose
20 the identity of a confidential source, or endanger the
21 life or physical safety of law enforcement personnel.

22 “(D) In the case of meetings closed to the public pur-
23 suant to subparagraph (A), the committee or subcommittee
24 may delete from the copies of transcripts that are required
25 to be made available or furnished to the public pursuant to
26 subparagraph (C), portions which it determines by vote of

1 the majority of a quorum of the committee or subcom-
2 mittee consist of material specified in subsection (i), (ii),
3 (iii), (iv), or (v) of subparagraph (A). A separate vote
4 of the committee or subcommittee shall be taken with respect
5 to the transcript of such meeting. The vote of each committee
6 or subcommittee member participating in each such vote shall
7 be recorded and published, and no proxies shall be allowed.
8 In place of each portion deleted from copies of the transcript
9 made available to the public, the committee or subcommittee
10 shall supply a full written explanation of why such por-
11 tion was deleted and a summary of the substance of the
12 deleted portion that does not itself disclose information speci-
13 fied in subsection (i), (ii), (iii), (iv), or (v) of subpara-
14 graph (A). The committee or subcommittee shall main-
15 tain a complete copy of the transcript of each meeting (in-
16 cluding those portions deleted from copies made available to
17 the public), for a period of at least one year after such
18 meeting, or until the Congress following the one in which
19 such meeting was held is assembled, whichever occurs later.

20 “(E) A point of order may be raised against any com-
21 mittee or subcommittee vote to close a meeting to the public
22 pursuant to subparagraph (A), or against any committee or
23 subcommittee vote to delete from the publicly available copy
24 a portion of a meeting transcript pursuant to subparagraph
25 (D), by committee or subcommittee members comprising

1 one-fourth or more of the total number of the members of
2 such committee or subcommittee present and voting for or
3 against such action. Any such point of order must be raised
4 before the entire House within two calendar days after the
5 vote against which the point of order is raised, and such point
6 of order shall be a matter of highest personal privilege. Each
7 such point of order shall immediately be referred to a Select
8 Committee on Meetings consisting of the Speaker of the
9 House of Representatives, the majority leader, and the mi-
10 nority leader. The select committee shall report to the House
11 within five calendar days (excluding days where the House
12 is not in session) a resolution containing its findings. If the
13 House adopts a resolution finding that the committee vote in
14 question was not in accordance with the relevant subsection,
15 it shall direct that there be made publicly available the entire
16 transcript of the meeting improperly closed to the public or
17 the portion or portions of any meeting transcript improperly
18 deleted from the publicly available copy.

19 “(F) The Select Committee on Meetings shall not be
20 subject to the provisions of subparagraph (A), (B), (C),
21 or (D) of this section.”

22 SEC. 103. (a) JOINT AND CONFERENCE COMMIT-
23 TEES.—The Legislative Reorganization Act of 1946 is
24 amended by inserting after section 133C, as added by sec-
25 tion 101(3) of this Act, the following new section:

1 "OPEN JOINT AND CONFERENCE COMMITTEE MEETINGS

2 "SEC. 133D. (a) Each meeting of each joint committee
3 and each subcommittee thereof, and each committee of con-
4 ference shall be open to the public: *Provided*, That a por-
5 tion or portions of such meetings may be closed to the public
6 if the committee determines by vote of a majority of a quo-
7 rum of the committee or subcommittee present that the
8 matters to be discussed or the testimony to be taken at such
9 portion or portions—

10 " (1) will disclose matters necessary to be kept secret
11 in the interests of national defense or the necessarily
12 confidential conduct of the foreign policy of the United
13 States;

14 " (2) will relate solely to matters of committee staff
15 personnel or internal staff management or administration;

16 " (3) will tend to charge with crime or misconduct,
17 or to disgrace any person, or will represent a clearly
18 unwarranted invasion of the privacy of any individual:
19 *Provided*, That this paragraph shall not apply to any
20 Government officer or employee with respect to his of-
21 ficial duties or employment: *And provided further*, That
22 as applied to a witness at a meeting, this paragraph shall
23 not apply unless the witness requests in writing that the
24 hearing be closed to the public;

25 " (4) will disclose information pertaining to any

1 investigation conducted for law enforcement purposes,
2 but only to the extent that the disclosure would (A) in-
3 terfere with enforcement proceedings, (B) deprive a
4 person of a right to a fair trial or an impartial adjudi-
5 cation, (C) disclose the identity of a confidential source
6 and, in the case of a record compiled by a criminal law
7 enforcement authority in the course of a criminal investi-
8 gation, or by an agency conducting a lawful national
9 security intelligence investigation, confidential informa-
10 tion furnished only by the confidential source, (D)
11 disclose investigative techniques and procedures, or (E)
12 endanger the life or physical safety of law enforcement
13 personnel; or

14 “(5) will disclose information relating to the trade
15 secrets or financial or commercial information pertaining
16 specifically to a given person where—

17 “(A) a Federal statute requires the informa-
18 tion to be kept confidential by Government officers
19 and employees; or

20 “(B) the information has been obtained by the
21 Federal Government on a confidential basis other
22 than through an application by such person for a
23 specific Government financial or other benefit, and
24 the information must be kept secret in order to pre-

1 vent grave and irreparable injury to the competitive
2 position of such person.

3 A separate vote of the committee shall be taken with respect
4 to each committee or subcommittee meeting a portion or
5 portions of which are proposed to be closed to the public
6 pursuant to this subsection. The vote of each committee
7 member participating in each such vote shall be recorded
8 and no proxies shall be allowed. Within one day of such
9 vote, the committee shall make publicly available a written
10 copy of such vote and, if a meeting or portion thereof is
11 closed to the public, a full written explanation of its action.

12 “(b) Each joint committee, subcommittee, and commit-
13 tee of conference shall make public announcement of the
14 date, place, and subject matter of each meeting at least one
15 week before such meeting unless the committee or subcom-
16 mittee determines by a vote of a majority of a quorum of
17 the committee or subcommittee present that committee busi-
18 ness requires that such meeting be called at an earlier date,
19 in which case the committee shall make public announce-
20 ment of the date, place, and subject matter of such meeting
21 at the earliest practicable opportunity.

22 “(c) A complete transcript shall be made of each meet-
23 ing of each joint committee, subcommittee, and committee
24 of conference (whether open or closed to the public). Ex-

1 cept as provided in subsection (d) of this section, a copy
2 of each such transcript shall be made available for public
3 inspection within seven days of each such meeting, and addi-
4 tional copies of any transcript shall be furnished to any per-
5 son at the actual cost of duplication. Notwithstanding the
6 provisions of subsection (d), in the case of meetings closed
7 to the public, the portion of such transcript made available
8 for public inspection shall include a list of all persons
9 attending and their affiliation, except for any portion of
10 such list which would disclose the identity of a confidential
11 source, or endanger the life or physical safety of law enforce-
12 ment personnel.

13 “(d) In the case of meetings closed to the public pur-
14 suant to subsection (a) of this section, the joint committee,
15 subcommittee, or committee of conference may delete from
16 the copies of transcripts that are required to be made avail-
17 able or furnished to the public pursuant to subsection (c) of
18 this section, those portions which it determines by vote of the
19 majority of a quorum of the committee or subcommittee con-
20 sist of materials specified in paragraph (1), (2), (3), (4),
21 or (5) of subsection (a) of this section. A separate vote of
22 the committee or subcommittee shall be taken with respect to
23 the transcript of such meeting. The vote of each committee or
24 subcommittee member participating in each such vote shall
25 be recorded and published, and no proxies shall be allowed.
26 In place of each portion deleted from copies of the transcript

1 made available to the public, the committee or subcommittee
2 shall supply a full written explanation of why such portion
3 was deleted, and a summary of the substance of the deleted
4 portion that does not itself disclose information specified in
5 paragraph (1), (2), (3), (4), or (5) of subsection (a) of
6 this section. The committee or subcommittee shall maintain
7 a complete copy of the transcript of each meeting (including
8 those portions deleted from copies made available to the pub-
9 lic), for a period of at least one year after such meeting, or
10 until the Congress following the one in which such meeting
11 was held is assembled, whichever occurs later.

12 “(e) A point of order may be raised against any com-
13 mittee vote of a joint committee, subcommittee, or committee
14 of conference to close a meeting to the public pursuant to sub-
15 section (a) of this section, or any committee or subcommittee
16 vote to delete from the publicly available copy a portion of a
17 meeting transcript pursuant to subsection (d) of this section
18 by committee or subcommittee members comprising one-
19 fourth or more of the total number of the members of such
20 committee or subcommittee present and voting for or against
21 such action. Any such point of order shall be raised in either
22 House within two calendar days after the vote against which
23 the point of order is raised, and such point of order shall be
24 a matter of highest personal privilege. Each such point of

1 order shall immediately be referred to a Select Joint Com-
2 mittee on Meetings consisting of the President pro tempore
3 of the Senate, the Speaker of the House of Representatives,
4 and the majority and minority leaders from each House. The
5 select committee shall examine the complete verbatim tran-
6 script of the meeting in question and shall rule whether the
7 vote to close the meeting was in accordance with subsection
8 (a) of this section, or whether the vote to delete a portion or
9 portions from publicly available copies of the meeting tran-
10 script was in accordance with subsection (d) of this section,
11 as the case may be. The select committee shall report to both
12 Houses a concurrent resolution within five calendar days
13 (excluding days where either House is not in session) con-
14 taining its findings. If both Houses adopt such a resolution
15 finding that the committee vote in question was not in
16 accordance with the relevant subsection, they shall direct
17 that there be made publicly available the entire transcript of
18 the meeting improperly closed to the public, or the portion
19 or portions of any meeting transcript improperly deleted from
20 the publicly available copy, as the case may be.

21 “(f) The Select Joint Committee on Meetings shall not
22 be subject to the provisions of subsection (a), (b), (c), or
23 (d) of this section.”

24 (b) Title I of the table of contents of the Legislative Re-
25 organization Act of 1946 is amended by inserting immedi-

1 ately below item 133C, as added by section 101 (c) of this
2 Act, the following:

“133D. Open joint and conference committee meetings.”.

3 SEC. 104. EXERCISE OF RULEMAKING POWERS.—The
4 provisions of this title are enacted by the Congress—

5 (1) as an exercise of the rulemaking power of the
6 Senate and the House of Representatives, respectively,
7 and as such they shall be considered as part of the rules
8 of each House, respectively, or of that House to which
9 they specifically apply, and such rules shall supersede
10 other rules only to the extent that they are inconsistent
11 therewith; and

12 (2) with full recognition of the constitutional right
13 of either House to change such rules (so far as relating
14 to such House) at any time, in the same manner, and to
15 the same extent as in the case of any other rule of such
16 House.

17 TITLE II—AGENCY PROCEDURES

18 SEC. 201. (a) This section applies, according to the
19 provisions thereof, to any agency, as defined in section 551
20 (1) of title 5, United States Code, where the body compris-
21 ing the agency consists of two or more members. Except as
22 provided in subsection (b), all meetings (including meetings
23 to conduct hearings) of such agencies, or a subdivision there-
24 of authorized to take action on behalf of the agency, shall be

1 open to the public. For purposes of this section, a meeting
2 consists of any procedure by which official agency business is
3 considered or discussed by at least the number of agency
4 members (or of members of a subdivision of the agency au-
5 thorized to take action on behalf of the agency), required to
6 take action on behalf of the agency.

7 (b) Subsection (a) shall not apply to any portion or
8 portions of an agency meeting where the agency determines
9 by a vote of a majority of its entire membership, or, in the
10 case of a subdivision thereof authorized to take action on
11 behalf of the agency, a majority of the membership of such
12 subdivision, that such portion or portions of the meeting—

13 (1) will disclose matters necessary to be kept secret
14 in the interests of national defense or the necessarily con-
15 fidential conduct of the foreign policy of the United
16 States;

17 (2) will relate solely to individual agency person-
18 nel or to internal agency office management and adminis-
19 tration or financial auditing;

20 (3) will tend to charge with crime or misconduct,
21 or to disgrace any person, or will represent a clearly
22 unwarranted invasion of the privacy of any individual:
23 *Provided*, That this paragraph shall not apply to any
24 Government officer or employee with respect to his offi-
25 cial duties or employment: *And provided further*, That

1 as applied to a witness at a meeting this paragraph shall
2 not apply unless the witness requests in writing that the
3 meeting be closed to the public;

4 (4) will disclose information pertaining to any in-
5 vestigation conducted for law enforcement purposes, but
6 only to the extent that the disclosure would (A) inter-
7 fere with enforcement proceedings, (B) deprive a per-
8 son of a right to a fair trial or an impartial adjudication,
9 (C) disclose the identity of a confidential source and, in
10 the case of a record compiled by a criminal law enforce-
11 ment authority in the course of a criminal investigation,
12 or by an agency conducting a lawful national security
13 intelligence investigation, confidential information fur-
14 nished only by the confidential source, (D) disclose
15 investigative techniques and procedures, (E) endanger
16 the life or physical safety of law enforcement personnel;
17 or (F) in the case of an agency authorized to regulate
18 the issuance or trading of securities, disclose informa-
19 tion concerning such securities, or the markets in which
20 they are traded, when such information must be kept
21 confidential in order to avoid premature speculation in
22 the trading of such securities; or

23 (5) will disclose information relating to the trade
24 secrets or financial or commercial information pertain-
25 ing specifically to a given person where—

1 (A) a Federal statute requires the information
2 to be kept confidential by Government officers and
3 employees; or

4 (B) the information has been obtained by the
5 Federal Government on a confidential basis other
6 than through an application by such person for a
7 specific Government financial or other benefit and
8 the information must be kept secret in order to pre-
9 vent grave and irreparable injury to the competitive
10 position of such person;

11 (6) will relate to the conduct or disposition (but
12 not the initiation) of a case of adjudication governed by
13 the provisions of the first paragraph of section 554 (a)
14 of title 5, United States Code, or of subsection (1),
15 (2), (4), (5), or (6) thereof.

16 A separate vote of the agency members, or the members of
17 a subdivision thereof authorized to take action on behalf of
18 the agency, shall be taken with respect to each agency
19 meeting a portion or portions of which are proposed to
20 be closed to the public pursuant to this subsection. The vote
21 of each agency member participating in such vote shall be
22 recorded and no proxies shall be allowed. Within one day of
23 such vote, the agency shall make publicly available a written
24 copy of such vote and, if a meeting or portion thereof is closed
25 to the public, a full written explanation of its action.

1 (c) Each agency shall make public announcement of
2 the date, place, and subject matter of each meeting, and
3 whether open or closed to the public, at least one week before
4 each meeting. Such announcement shall be made unless the
5 agency determines by a vote of the majority of its members,
6 or in the case of a subdivision thereof authorized to take
7 action on behalf of the agency, a majority of the members of
8 the subdivision, that agency business requires that such meet-
9 ings be called at an earlier date, in which case the agency
10 shall make public announcement of the date, place, and sub-
11 ject matter of such meeting, and whether open or closed to
12 the public, at the earliest practicable opportunity.

13 (d) A complete transcript or electronic recording ad-
14 equate to fully record the proceedings shall be made of each
15 meeting of each agency (whether open or closed to the pub-
16 lic). Except as provided in subsection (e) of this section a
17 copy of the transcript or electronic recording of each such
18 meeting, together with any official minutes of such meeting,
19 shall be made available to the public for inspection, and
20 additional copies of any such transcript, minutes, or record-
21 ing (or a copy of a transcription of the electronic recording),
22 shall be furnished to any person at the actual cost of duplica-
23 tion or transcription. Notwithstanding the provisions of sub-
24 section (e), in the case of meetings closed to the public,
25 the portion of such transcript made available for public
26 inspection or electronic recording shall include a list

1 of all persons attending and their affiliation, except for any
2 portion of such list which would disclose the identity of a
3 confidential source, or endanger the life or physical safety
4 of law enforcement personnel.

5 (e) In the case of meetings closed to the public pursuant
6 to subsection (b) of this section, the agency may delete from
7 the copies of transcripts, electronic recordings, and minutes
8 made available or furnished to the public pursuant to subsec-
9 tion (d) of this section, those portions which the agency
10 determines by vote of a majority of its membership consist
11 of materials specified in paragraph (1), (2), (3), (4),
12 (5), or (6) of subsection (b) of this section. A separate
13 vote of the agency shall be taken with respect to each tran-
14 script, electronic recording, or minutes. The vote of each
15 agency member participating in such vote shall be recorded
16 and published, and no proxies shall be allowed. In place of
17 each portion deleted from copies of the meeting transcript,
18 electronic recording, and minutes made available to the pub-
19 lic, the agency shall supply a full written explanation of why
20 such portion was deleted and a summary of the substance of
21 the deleted portion that does not itself disclose information
22 specified in paragraph (1), (2), (3), (4), (5), or (6) of
23 subsection (b). The agency shall maintain a complete ver-
24 batim copy of the transcript, or a complete electronic record-
25 ing of each meeting (including those portions deleted from

1 copies made available to the public), for a period of at least
2 two years after such meeting, or until one year after the con-
3 clusion of any proceeding with respect to which the meeting,
4 or a portion thereof, was held, whichever occurs later.

5 (f) Each agency subject to the requirements of this sec-
6 tion shall, within three hundred and sixty days after the en-
7 actment of this Act, following consultation with the Ad-
8 ministrative Conference of the United States and published
9 notice in the Federal Register of at least thirty days and
10 opportunity for written comment by any persons, promulgate
11 regulations to implement the requirements of subsections (a)
12 through (e) inclusive of this section. Such regulations must,
13 prior to final promulgation, receive the approval in writing
14 of the Assistant Attorney General, office of Legal Counsel,
15 certifying that in his opinion the regulations are in accord
16 with the requirements of this section. Any citizen or person
17 resident in the United States may bring a proceeding in the
18 United States Court of Appeals for the District of Columbia
19 Circuit—

20 (1) to require an agency to promulgate such regu-
21 lations if such agency has not promulgated such regu-
22 lations within the time period specified herein; or

23 (2) to set aside agency regulations issued pursu-
24 ant to this subsection that are not in accord with the
25 requirements of subsections (a) through (e) inclusive

1 of this section, and to require the promulgation of
2 regulations that are in accord with such subsections.

3 (g) The district courts of the United States shall have
4 jurisdiction to enforce the requirements of subsections (a)
5 through (e) inclusive of this section by declaratory judg-
6 ment, injunctive relief, or otherwise. Such actions shall
7 be brought within sixty days after the meeting whose closing
8 is challenged as a violation of this section: *Provided*, That if
9 public notice of such meeting was not provided by the agency
10 in accordance with the requirements of this section, such
11 action shall be brought within sixty days of such meeting
12 or such public announcement, whichever is the later. Such
13 actions shall be brought against an agency and its members
14 by any citizen or person resident in the United States. Such
15 actions may be brought in the district wherein the plaintiff
16 resides, or has his principal place of business, or where the
17 agency in question has its headquarters. In such actions a
18 defendant shall serve his answer within twenty days after
19 the service of the complaint. The burden is on the agency to
20 sustain its action. Except as to causes the court considers
21 of greater importance, proceedings before the district court,
22 as authorized by this paragraph, take precedence on the
23 docket over all other causes and shall be assigned a hearing
24 and trial at the earliest practicable date and expedited in
25 every way. In deciding such cases the court may examine

1 any portion of a meeting transcript or electronic recording
2 that was deleted from the publicly available copy and may
3 take such additional evidence as it deems necessary. Among
4 other forms of equitable relief, including the granting of an
5 injunction against future violations of this section, the court
6 may require that any portion of a meeting transcript or elec-
7 tronic recording improperly deleted from the publicly avail-
8 able copy be made publicly available for inspection and copy-
9 ing, and, having due regard for orderly administration and
10 the public interest, may set aside any agency action taken
11 or discussed at an agency meeting improperly closed to the
12 public. The jurisdiction of the district courts under this sub-
13 section shall be concurrent with that of any other court other-
14 wise authorized by law to review agency action. Any such
15 court may, at the application of any person otherwise prop-
16 erly a party to a proceeding before such court to review an
17 agency action, inquire into asserted violations by the agency
18 of the requirements of this section and afford the relief au-
19 thorized by this section in the case of proceedings by district
20 courts.

21 (h) In any action brought pursuant to subsection (f)
22 or (g) of this section, the reasonable costs of litigation (in-
23 cluding reasonable fees for attorneys and expert witnesses)
24 may be apportioned to the original parties or their successors
25 in interest whenever the court determines such award is ap-

1 appropriate. In the case of apportionment of costs against an
2 agency or its members, the costs may be assessed by the
3 court against the United States.

4 (i) The agencies subject to the requirements of this
5 section shall annually report to Congress regarding their
6 compliance with such requirements, including a tabulation
7 of the total number of agency meetings open to the public,
8 the total number of meetings closed to the public, the rea-
9 sons for closing such meetings, and a description of any
10 litigation brought against the agency under this section.

11 SEC. 202. Title 5 of the United States Code is amended
12 by adding after section 557 the following:

13 “EX PARTE COMMUNICATIONS IN AGENCY PROCEEDING

14 “SEC. 557A. (a) DEFINITIONS.—For purposes of this
15 section—

16 “(1) ‘Ex parte communication’ means a com-
17 munication relevant to an on-the-record agency pro-
18 ceeding where such communication is not made on the
19 record, or openly at a scheduled hearing session in such
20 proceeding, and reasonable notice thereof is not given to
21 all parties to, or intervenors in, such proceedings.

22 “(2) ‘Interested person’ means any person (includ-
23 ing a member or employee of any Government agency or
24 authority) other than a member or employee of the

1 agency before which the on-the-record proceeding is
2 pending who communicates with an agency member or
3 employee with respect to any such on-the-record agency
4 proceeding.

5 “(3) ‘On-the-record agency proceeding’ means any
6 proceedings before any agency where the agency action,
7 or a portion thereof, is required by law to be determined
8 on the record after an opportunity for an agency hearing.

9 “(b) This section applies to any on-the-record agency
10 proceeding.

11 “(c) In any agency proceeding which is subject to sub-
12 section (b) of this section—

13 “(1) no interested person shall make or cause to be
14 made to any member of the agency in question, adminis-
15 trative judge, or employee who is or may be involved in
16 the decisional process of the proceeding any ex parte
17 communication;

18 “(2) no member of the agency in question, adminis-
19 trative judge, or employee who is or may be involved in
20 the decisional process of the proceeding shall make or
21 cause to be made to an interested person any ex parte
22 communication;

23 “(3) a member of the agency in question, adminis-
24 trative judge, or employee who is or may be involved

1 in the decisional process of the proceeding, who receives
2 a communication in violation of this subsection, shall
3 place in the public record of the proceeding—

4 “(A) any written material submitted in viola-
5 tion of this subsection; and

6 “(B) a memorandum stating the substance of
7 each oral communication submitted in violation of
8 this subsection; and

9 “(C) responses, if any, to the materials de-
10 scribed in subparagraphs (A) and (B) of this
11 subsection;

12 “(4) upon obtaining knowledge of a communica-
13 tion in violation of this subsection prompted by or from
14 a party or intervenors to any proceeding to which this
15 section applies, the agency members or member, the
16 administrative judge, or employee presiding at the hear-
17 ings may, to the extent consistent with the interests of
18 justice and the policy of the underlying statutes, require
19 the party or intervenors to show cause why his claim
20 or interest in the proceeding should not be dismissed,
21 denied, disregarded, or otherwise adversely affected by
22 virtue of such violation.

23 “(d) The prohibitions of this section shall not apply—

24 “(1) to any proceeding to the extent required for
25 the disposition of ex parte matters as authorized by law;

1 “(2) to any written communication from persons
2 who are neither parties or intervenors to the proceeding,
3 nor government officials acting in their official capacity,
4 where such communications are promptly placed in the
5 public docket file of the proceedings.

6 “(e) The prohibitions of this section shall apply at
7 such time as the agency shall designate, having due regard
8 for the public interest in open decisionmaking by agencies,
9 but in no case shall they apply later than the time at which a
10 proceeding is noticed for hearing. If the person responsible
11 for the communication has knowledge that the proceeding
12 will be noticed, the prohibitions of this section shall apply at
13 the time of his acquisition of such knowledge. In the case of
14 any person who files with an agency any application, petition,
15 or other form of request for agency action, the prohibitions
16 of this section shall apply, with respect to communications
17 with such person, commencing at the time of such filing or
18 at the time otherwise provided by this subsection, whichever
19 occurs first.

20 “(f) Every agency notice of an opportunity for partici-
21 pation by interested persons in a hearing shall contain a
22 statement as follows:

23 “(1) if such notice relates to an on-the-record
24 agency proceeding, it shall state that the proceeding is
25 subject to the provisions of this section with respect
26 to ex parte communications;

1 “(2) if such notice relates to an agency proceeding
2 not on-the-record, it shall state that the proceeding is not
3 subject to the provisions of this section with respect to
4 ex parte communications.

5 If a notice of hearing with respect to any proceeding before
6 an agency fails to comply with this section, the proceeding
7 shall be deemed to be an on-the-record agency proceeding for
8 purposes of ex parte communications.

9 “(g) Each agency subject to the requirements of this
10 section shall, within three hundred and sixty days after the
11 enactment of this section, following consultation with the
12 Administrative Conference of the United States and pub-
13 lished notice in the Federal Register of at least thirty days
14 and opportunity for written comment, promulgate regulations
15 to implement the requirements of this section. Any citizen or
16 person resident in the United States may bring a proceeding
17 in the United States Court of Appeals for the District of
18 Columbia Circuit—

19 “(1) to require any agency to promulgate regula-
20 tions if the agency has not promulgated such regulations
21 within the time period specified; or

22 “(2) to set aside agency regulations issued pursuant
23 to this subsection that are not in accord with the require-
24 ments of this section, and to require the promulgation
25 of regulations that are in accord with this section.

1 “(h) Nothing in this section shall be construed to per-
2 mit any communication which is prohibited by any other
3 provision of law, or to prohibit any agency from adopting,
4 by rule or otherwise, prohibitions or regulations governing
5 ex parte communications which are additional to, or more
6 stringent than, the requirements of this section.

7 “(i) The district courts of the United States shall have
8 jurisdiction to enforce the requirements of subsections (c)
9 and (e) of this section by declaratory judgment, injunctive
10 relief, or otherwise. The action may be brought by any
11 citizen of or person resident in the United States. The
12 action shall be brought in the district wherein the plaintiff
13 resides or has his principal place of business, or where the
14 agency in question has its headquarters. Where a person
15 other than an agency, agency member, administrative judge,
16 or employee is alleged to have participated in a violation of
17 the requirements of this section, such person may, but need
18 not, be joined as a party defendant; for purposes of joining
19 such person as a party defendant, service may be had on
20 such person in any district. Among other forms of equitable
21 relief, the court may require that any ex parte communica-
22 tion made or received in violation of the requirements of this
23 section be published, and, having due regard for orderly
24 administration and the public interest, may set aside any
25 agency action taken in a proceeding where the violation

1 occurred. The jurisdiction of the district courts under this
2 subsection shall be concurrent with that of any other court
3 otherwise authorized by law to review agency action. Any
4 such court may, at the application of any person otherwise
5 properly a party to a proceeding before such court to review
6 an agency action, inquire into asserted violations by the
7 agency of the requirements of this section, and afford the
8 relief authorized by this section in the case of proceedings
9 by district courts.

10 “(j) In any action brought pursuant to subsection (g)
11 and (i) of this section, cost of litigation (including reason-
12 able fees for attorneys and expert witnesses) may be appor-
13 tioned to the original parties or their successors in interest
14 whenever the court determines such award is appropriate.”

15 SEC. 203. This title and the amendments made by this
16 title do not authorize withholding of information or limit the
17 availability of records to the public except as provided in this
18 title. This title does not authorize any information to be
19 withheld from Congress.

A BILL

To provide that meetings of Government agencies and of congressional committees shall be open to the public, and for other purposes.

By Mr. CHILES, Mr. BAYH, Mr. BEALL, Mr. BIDEN, Mr. BROCK, Mr. CLARK, Mr. CRANSTON, Mr. GARY W. HART, Mr. PHILIP A. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUMPHREY, Mr. MCGOVERN, Mr. MATHIAS, Mr. METCALE, Mr. MONDALE, Mr. NELSON, Mr. PACKWOOD, Mr. PERCY, Mr. PROXMIRE, Mr. ROTH, Mr. STAFFORD, Mr. STONE, and Mr. WEICKER

JANUARY 15, 1975

Read twice and referred to the Committee on
Government Operations